BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.	Rulemaking 04-04-003 (Filed April 1, 2004) (QF Issues)
Order Instituting Rulemaking to Promote Consistency in Methodology and Input Assumptions in Commission Applications of Short-Run And Long-Run Avoided Costs, Including Pricing for Qualifying Facilities.	Rulemaking 04-04-025 (Filed April 22, 2004) (QF Issues)

OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF ALJ HALLIGAN

I. INTRODUCTION

In accordance with Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the Division of Ratepayer Advocates (DRA) hereby submits its opening comments on the Proposed Decision (PD) of Administrative Law Judge Halligan in the above-captioned proceeding.

Overall, DRA supports Commission approval of the PD. The PD does an excellent job addressing the wide variety of highly contentious issues that have been the subject of many years of litigation at the Commission. Particularly noteworthy is the PD's conclusion that energy prices for short-run avoided costs (SRAC) should reflect actual market energy prices. This will save consumers hundreds of millions of dollars compared to the historically over-market SRAC pricing methodologies used in the past.

However, certain aspects of the PD should be modified or clarified. Specifically, DRA recommends the following changes:

1. Variable Operations and Maintenance (O&M) payments should be removed as a separate factor in the SRAC energy price calculation, as O&M costs are already reflected in the market energy prices;
2. If new standard offer contracts are approved, the Commission should clarify that such contracts are not considered to be executed unless signed by both the Qualifying Facility (QF) and the utility, to prevent the potential for a repeat of the "gold rush" of QF contracts experienced in the 1980's;
3. If a new standard contract of 10 years' duration is approved, the Commission needs to specify some means to ensure compliance with greenhouse gas standards implemented in Senate Bill (SB) 1368, such as clear authority for utilities to reject contracts for non-complying projects;
4. The capacity prices specified in the PD need to be reduced to reflect the value of the capacity provided by QFs;
5. The proposal to use the Time-of-Use/Time-of-Day (TOU/TOD) factors from recent power solicitations needs to be modified to be applicable to QFs' separate energy and capacity prices;
6. Finding of Fact 36 should state that the QF Program contract provisions adopted in this decision apply to QFs with expiring or expired contracts and new contracts, as well as to QFs on contract extensions approved in certain other decisions.
7. References in the PD to the Office of Ratepayer Advocates should be changed to refer to the Division of Ratepayer Advocates.

II. DISCUSSION

A. Variable O&M Payments

The PD approves the market index formula (MIF) to set SRAC energy prices for existing and new QF contracts. DRA strongly supports the PD's proposal to use the MIF to set SRAC energy prices. However, the proposed MIF specified in the PD contains a Market Hear Rate (MHR) and a separate factor for variable O&M (PD, page 62). This inappropriately results in double payment because the MHR factor already incorporates O&M costs. To eliminate the double counting of O&M costs in the MIF, the PD should be modified to take out the separate O&M factor.

B. Preventing A Gold Rush

The PD proposes that the Commission establish two new types of standard offer contracts for QFs, an as-available capacity contract of up to five years' duration and a firm capacity contract of up to ten years' duration. DRA does not support the adoption of a new firm, ten-year capacity contract. DRA recommends that new long-term, firm contracts be obtained by QFs either by participating in existing utility power solicitations or by individual negotiation of bilateral contracts. Establishing new standard offers undermines, complicates and conflicts with the Commission's other procurement and resource planning efforts: the implementation of the renewable portfolio standards and the long-term procurement process.

In addition, the establishment of new standard offers could result in a repeat of the events of the mid-1980's where hundreds of projects totaling over 10,000 MW of capacity signed contracts in the span of a few weeks, referred to as the "QF gold rush," thereby burdening utilities and ratepayers with much more power than was needed or economic at the time. If the Commission is going to resurrect standard offer contracts, it must also ensure that a reoccurrence of the gold rush does not take place. One simple means is to specify that a contract is not considered to have been executed and legally binding unless it has been signed by both the QF and the utility. By contrast, in the 1980's, the QF's signature alone was required to execute a standard offer contract. This significantly limited the ability of utilities and other parties to prevent the oversubscription of those contracts.

C. SB 1368 Compliance

Senate Bill 1368, enacted in 2006, prohibits utilities from making contractual commitments of longer than five years' duration for baseload generation, unless that generation has greenhouse gas emission rates comparable to or better than a new combined-cycle gas turbine. The PD proposes that a new firm capacity contract of up to ten years' duration be implemented. However, this could potentially require utilities to offer ten year contracts to projects that fail to meet the emission standards enacted in SB 1368.

The Commission should modify the PD to eliminate the potential requirement that utilities enter into contracts that do not comply with state law. As stated above, DRA does not support the adoption of a new firm capacity standard offer of ten years' duration. If the Commission does approve such a contract, the Commission must give utilities clear guidance and authority not to execute such contracts with projects that fail to meet the emission standards required by SB 1368.

D. Capacity Prices

The PD proposes that as-available capacity prices be set at $59.19/kW-year (PD, page 90), and that a capacity price of $104/kW-year be used for the new ten-year, firm capacity, standard offer contract (PD, page 93). Both the proposed as-available and firm capacity prices are unreasonably high and need to be reduced to avoid overpayment and unnecessary costs for ratepayers.

The proposed as-available price has two primary problems. First, the PD states that the capacity payments should be made even if the as-available QF capacity is not counted for reliability purposes in utility resource plans. This is unfair to ratepayers in that it would require ratepayers to pay twice for the same capacity. Ratepayers will have to pay the QFs for the as-available capacity and then pay again for additional capacity to meet reliability requirements. The PD should be modified such that as-available capacity payments are only made if as-available capacity is counted towards meeting utility reliability needs.

Second, the proposed price of $59.19/kW-year is too high and overstates the value of the capacity. Modern combustion turbines can provide ancillary service benefits valued at $14.82/kW-year (PD, page 88). This ancillary service benefit should be subtracted from the total cost of a combustion turbine (CT) to calculate the capacity component of the CT cost. Instead, the PD only reduces the CT cost by $4.94/kW-year. The PD should be modified to reduce the CT cost by the full value of ancillary services.

The proposed firm capacity price also has two primary problems with it. First, the PD proposes to use the value for a combined cycle gas turbine (CCGT) rather than for a CT. A CCGT is a very efficient new resource with heat rates at or below 7,000 Btu/kWh.

A CCGT costs more than a CT largely due to improving the efficiency and producing lower cost energy. These energy-related capital costs should be removed from the total cost of the CCGT in order to calculate the component of the CCGT cost that is capacity related. Instead, the PD uses the entire CCGT capital cost in specifying the capacity price.

Second, the CCGT price specified in the PD reflects a twenty year payout of the CCGT cost, whereas the proposed QF contract is of only ten years' duration, and the referenced CCGT has an operating life of 30 years or more. The price specified in the PD should be adjusted downwards so as to reflect the value to ratepayers of having the capacity for ten years rather than 30 years.

E. Time-of-Use/Time-of-Day Factors

The PD proposes that utilities update the current TOU/TOD factors used for QF pricing to reflect the factors used in the utilities' most recent Request For Offers (RFOs) for power. However, recent utility RFOs have typically included a single price (and single TOU/TOD factor) rather than separate energy and capacity prices (and separate TOU/TOD factors) that are contained in QF contracts. The single TOU/TOD factor in the recent RFOs is not appropriate to use for separate energy and capacity prices. The PD should be modified to indicate that TOU/TOD factors for QF prices should be updated to reflect the values used in recent RFOs, but with reasonable changes for application to separate energy and capacity prices.

F. Clarification of Finding of Fact 36

While it is evident from the text of the PD that the policies and pricing it adopts apply to expiring or expired QF contracts and to new QFs, there is no corresponding Finding of Fact that indicates that these contracts are within the purview of this decision. Finding of Fact 36, however, specifies that the QF Program contract options extend to QF that are or were on contract extensions approved in certain other Commission decisions. For purposes of clarity, DRA recommends that the following sentence be added to Finding of Fact 36, as follows (in italics):

36. *The prospective QF Program contract provisions we adopt in this decision are available to expiring or expired QFs and to new QFs.* It is reasonable to extend our prospective QF Program contract options to QFs that are, or were, on contract extensions approved in D.02-08-071, D.03-12-062, D.04-01-050, and D.05-12-009.

G. References to ORA

In a number of places the PD refers to the Division of Ratepayer Advocates by its prior name, the Office of Ratepayer Advocates (ORA). While this proceeding has lingered on long enough to cover periods where DRA has gone by two different names, to avoid confusion, DRA should be referred to by just one name in the PD. Therefore, DRA recommends that all references to "ORA" in the PD be change to "DRA."

III. CONCLUSION

DRA respectfully recommends adoption of the PD with the modifications and clarifications discussed above.

Respectfully submitted,

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May 25, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **"OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF ALJ HALLIGAN"** in **R.04-04-003 / R.04-04-025** by using the following service:

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Executed on May 25, 2007 at San Francisco, California.

/s/ NELLY SARMIENTO

NELLY SARMIENTO

N O T I C E

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